

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**WILLIAM F. SMITH, JR.,**

**Plaintiff,**

**v.**

**AMAZON.COM.KYDC, LLC,**

**Defendant.**

**Civil Action No. 3:18-CV00170-MHL**

**REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendant Amazon.com.kydc, LLC hereby replies to Plaintiff William F. Smith, Jr.'s Response to its Motion to Dismiss. In his Response, Plaintiff fails to address the central issues raised in Defendant's Motion, namely, that Plaintiff's claims are time-barred and cannot survive dismissal for that reason. Further, Plaintiff's Response merely repeats the allegations from his Complaint and further demonstrates that he has not stated a valid cause of action under the ADA or the Sixth Amendment. For these reasons and as stated in its Motion, Defendant requests that the Court dismiss Plaintiff's Complaint in its entirety, with prejudice.

**I. Plaintiff's Claims Are Time-Barred and Should Be Dismissed**

Plaintiff's Response fails to address the central reason that his claims cannot survive dismissal—he failed to file his Complaint within ninety days of receiving a notice of right to sue from the EEOC. Specifically, by waiting to file his Complaint on June 1, 2017, Plaintiff missed his April 2, 2017 filing deadline by sixty days. As a result, Plaintiff forfeited his right to pursue his claims and they are now barred. See Lewis v. Norfolk S. Corp., 217 F. Supp. 2d 807, 811

(E.D. Va. 2003). Nothing in Plaintiff's Response points to any remedy for this issue. As such, Plaintiff's claims cannot survive and should be dismissed with prejudice.

## **II. Plaintiff's Response Demonstrates That He Cannot State A Viable Claim**

In addition, Plaintiff's Response simply repeats the allegations from his Complaint and further demonstrates that he has not stated a viable cause of action. First, Plaintiff repeats his claim that Amazon violated the ADA by asking him about a disability. However, he does not provide any legal theory or explanation of why he believes those facts would support a legal claim, nor does he allege any facts that would support a claim that Amazon discriminated against him based on a disability. Second, Plaintiff continues to assert that Amazon violated his Sixth Amendment rights, but Plaintiff is not a criminal defendant and this case is not a criminal prosecution. Rather, he was an at-will employee whose employment could be terminated at any time for his misconduct or for any other reason. His claim under the Sixth Amendment therefore fails. See Rowan v. Tractor Supply Co., 559 S.E.2d 709, 710-11 (Va. 2002). Finally, since Plaintiff does not address a wrongful termination claim, Amazon presumes that Plaintiff has abandoned any attempt to plead such a claim.

## **III. Conclusion**

For these reasons and as more fully set forth in its Motion, Amazon respectfully requests that this Court dismiss Plaintiff's Complaint in full, with prejudice.

Dated: May 21, 2018

Respectfully submitted,

/s/ Jocelyn R. Cuttino

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*Attorneys for Defendant Amazon.com.kydc, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2018, a copy of the foregoing document was served on the following parties via certified mail:

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*Plaintiff proceeding pro se*

/s/ Jocelyn R. Cuttino